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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/776,780	02/06/2001	Roy Zisapel	1706-34-1	3909

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EXAMINER

COULTER, KENNETH R

ART UNIT	PAPER NUMBER
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2141

11

DATE MAILED: 04/04/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.
09/776,780

Applicant(s)
Zisapel et al.

Examiner
Kenneth R. Coulter

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2141



-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on _____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 5-11, 13, and 18-27 is/are pending in the application.
- 4a) Of the above, claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 13 is/are allowed.
- 6) ☒ Claim(s) 5-11, 18, 19, and 21-27 is/are rejected.
- 7) ☒ Claim(s) 20 is/are objected to.
- 8) ☐ Claims _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
*See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☒ Interview Summary (PTO-413) Paper No(s). 10
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____ 6) ☐ Other:

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DETAILED ACTION

As stated in the interview summary, the previous office action (paper #9; 9/11/02) is withdrawn.

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(e) the invention was described in-

(1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effect under this subsection of a national application published under section 122(b) only if the international application designating the United States was published under Article 21(2)(a) of such treaty in the English language; or

(2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that a patent shall not be deemed filed in the United States for the purposes of this subsection based on the filing of an international application filed under the treaty defined in section 351(a).

2. Claims 5 - 9, 18, and 21 - 27 are rejected under 35 U.S.C. 102(e) as being disclosed by Rochberger et al. (U.S. Pat. No. 6,205,146) (Method of Dynamically Routing to a Well Known Address in a Network).

2.1 Regarding claim 5, Rochberger discloses a method for load balancing requests on a network, the method comprising:

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determining the *network proximity* of a requestor with respect to each of at least two servers located at different geographical locations (Abstract; col. 4, line 64 - col. 5, line 8; col. 5, line 52 - col. 6, line 6);

designating a *closest* one of said at least two servers by ranking said at least two servers by network proximity (Abstract; col. 4, line 64 - col. 5, line 8; col. 5, line 52 - col. 6, line 6); and

directing requests from said requestor to one of said at least two servers by having greatest network proximity (Abstract; col. 4, line 64 - col. 5, line 8; col. 5, line 52 - col. 6, line 6),

said network proximity being determined by at least one of latency and **number of hops** between said requestor and each of said at least two servers (Abstract; col. 4, line 64 - col. 5, line 8; col. 5, line 52 - col. 6, line 6).

2.2 Per claim 6, Rochberger teaches directing request from any source having a subnet that is the same as the subnet of said requestor to said closest server (Abstract; col. 4, line 64 - col. 5, line 8; col. 5, line 52 - col. 6, line 6).

2.3 Regarding claim 7, Rochberger discloses

monitoring the current load of each of said servers (Abstract; col. 4, line 64 - col. 5, line 8; col. 5, line 52 - col. 6, line 6); and

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directing request from said requestor to one of said at least two servers when the current load of said one of said at least two servers is less than the current load of every other of said at least two servers (Abstract; col. 4, line 64 - col. 5, line 8; col. 5, line 52 - col. 6, line 6).

2.4 Per claims 8 and 9, these specific features are clearly disclosed by Rochberger (Abstract; col. 4, line 64 - col. 5, line 8; col. 5, line 52 - col. 6, line 6).

2.5 Regarding claims 18 and 21 - 27, the rejection of claims 5 - 9 (paragraphs 2.1 - 2.4) applies fully.

3. Claims 5 - 11, 18, 19, and 21 - 27 are rejected under 35 U.S.C. 102(e) as being disclosed by Bare (U.S. Pat. No. 6,493,318) (Cost Propagation Switch Protocols).

3.1 Regarding claim 5, Bare discloses a method for load balancing requests on a network, the method comprising:

determining the *network proximity* of a requestor with respect to each of at least two servers located at different geographical locations (Fig. 11; col. 11, lines 6 - 11; col. 6, lines 62 - 67; col. 7, lines 11 - 25);

designating a *closest* one of said at least two servers by ranking said at least two servers by network proximity (Fig. 11; col. 11, lines 6 - 11; col. 6, lines 62 - 67; col. 7, lines 11 - 25); and

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directing requests from said requestor to one of said at least two servers by having greatest network proximity (Fig. 11; col. 11, lines 6 - 11; col. 6, lines 62 - 67; col. 7, lines 11 - 25),

said network proximity being determined by at least one of **latency** and **number of hops** between said requestor and each of said at least two servers (Fig. 11; col. 11, lines 6 - 11; col. 6, lines 62 - 67; col. 7, lines 11 - 25).

3.2 Per claim 6, Bare teaches directing request from any source having a subnet that is the same as the subnet of said requestor to said closest server (Fig. 11; col. 11, lines 6 - 11; col. 6, lines 62 - 67; col. 7, lines 11 - 25).

3.3 Regarding claim 7, Bare discloses

monitoring the current load of each of said servers (Fig. 11; col. 11, lines 6 - 11; col. 6, lines 62 - 67; col. 7, lines 11 - 25); and

directing request from said requestor to one of said at least two servers when the current load of said one of said at least two servers is less than the current load of every other of said at least two servers (Fig. 11; col. 11, lines 6 - 11; col. 6, lines 62 - 67; col. 7, lines 11 - 25).

3.4 Per claims 8 - 11, these specific features are clearly disclosed by Bare (Fig. 11; col. 11, lines 6 - 11; col. 6, lines 62 - 67; col. 7, lines 11 - 25).

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3.5 Regarding claims 18, 19, and 21 - 27, the rejection of claims 5 - 11 (paragraphs 3.1 - 3.4) applies fully.

4. Claims 5 - 11, 18, 19, and 21 - 27 are rejected under 35 U.S.C. 102(e) as being disclosed by Kenner et al. (U.S. Pat. No. 6,112,239) (System and Method for Server-Side Optimization of Data Delivery on a Distributed Computer Network).

4.1 Regarding claim 5, Kenner discloses a method for load balancing requests on a network, the method comprising:

determining the *network proximity* of a requestor with respect to each of at least two servers located at different geographical locations (Abstract; col. 7, line 42 - col. 8, line 6; col. 13, lines 16 - 35);

designating a *closest* one of said at least two servers by ranking said at least two servers by network proximity (Abstract; col. 7, line 42 - col. 8, line 6; col. 13, lines 16 - 35); and

directing requests from said requestor to one of said at least two servers by having greatest network proximity (Abstract; col. 7, line 42 - col. 8, line 6; col. 13, lines 16 - 35),

said network proximity being determined by at least one of latency and **number of hops** between said requestor and each of said at least two servers (Abstract; col. 7, line 42 - col. 8, line 6; col. 13, lines 16 - 35).

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4.2 Per claim 6, Kenner teaches directing request from any source having a subnet that is the same as the subnet of said requestor to said closest server (Abstract; col. 7, line 42 - col. 8, line 6; col. 13, lines 16 - 35).

4.3 Regarding claim 7, Kenner discloses
monitoring the current load of each of said servers (Abstract; col. 7, line 42 - col. 8, line 6; col. 13, lines 16 - 35); and

directing request from said requestor to one of said at least two servers when the current load of said one of said at least two servers is less than the current load of every other of said at least two servers (Abstract; col. 7, line 42 - col. 8, line 6; col. 13, lines 16 - 35).

4.4 Per claims 8 - 11, these specific features are clearly disclosed by Kenner (Abstract; col. 7, line 42 - col. 8, line 6; col. 13, lines 16 - 35).

4.5 Regarding claims 18, 19, and 21 - 27, the rejection of claims 5 - 9 (paragraphs 4.1 - 4.4) applies fully.

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Allowable Subject Matter

5. Claim 13 is allowed.
6. Claim 20 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.
7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kenneth Coulter whose telephone number is (703) 305-8447.

KENNETH R. COULTER
PRIMARY EXAMINER


krc

April 1, 2003